

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:12-CR-339-D

UNITED STATES OF AMERICA,

v.

ERIC BRANCH,

Defendant.

ORDER

On May 21, 2021, the court entered a comprehensive order denying, inter alia, Eric Branch's ("Branch" or "defendant") motion for compassionate release. See [D.E. 209]. Branch is a violent recidivist who engaged in very serious criminal conduct. See id. at 1, 8–9. Branch also has performed poorly on supervision. See id. at 8–9.

In Branch's second motion for compassionate release, Branch largely repeats the same arguments that the court already rejected and asks the court to consider supervised release or home confinement due to his medical history. See [D.E. 219] 21. Branch is now vaccinated against COVID-19. See [D.E. 224-1]. The vaccine provides protection. See, e.g., United States v. Jacques, No. 20-3276, 2022 WL 894695, at *2 (2d Cir. Mar. 28, 2022) (unpublished); United States v. Scalea, No. 21-2631, 2022 WL 795425, at *1 (3d Cir. Mar. 15, 2022) (unpublished) (noting that although "vaccination does not rule out reinfection . . . this does not diminish that vaccination mitigates the risk of COVID-19 complications"); United States v. Shettler, No. 21-10484, 2022 WL 620311, at *4 (11th Cir. Mar. 3, 2022) (per curiam) (unpublished); United States v. Ibarra, No. 21-10255, 2022 WL 229198, at *1 (9th Cir. Jan. 25, 2022) (unpublished); United States v. Lemons, 15 F.4th 747, 751 (6th Cir. 2021) ("And following full vaccination, it is now well understood, both the likelihood

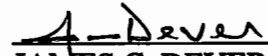
of contracting COVID-19 and the associated risks should one contract the virus are significantly reduced” so that “an inmate largely faces the same risk from COVID-19 as those who are not incarcerated.”); United States v. Hald, 8 F.4th 932,936 n.2 (10th Cir. 2021) (noting “there is certainly room for doubt” that being fully vaccinated or being offered a vaccine “would support a finding of ‘extraordinary and compelling reasons’” justifying compassionate release), cert. denied, 142 S. Ct. 2742 (2022); United States v. Broadfield, 5 F.4th 801, 803 (7th Cir. 2021) (“[F]or the vast majority of prisoners, the availability of a vaccine makes it impossible to conclude that the risk of COVID-19 is an ‘extraordinary and compelling’ reason for immediate release.”); United States v. Baeza-Vargas, 532 F. Supp. 3d 840, 843–46 (D. Ariz. 2021) (collecting cases showing the “growing consensus” of district courts that have ruled that an inmate receiving a COVID-19 vaccine “weighs against a finding of extraordinary and compelling circumstances”); cf. United States v. Petway, No. 21-6488, 2022 WL 168577, at *2 (4th Cir. Jan. 19, 2022) (per curiam) (unpublished). And the wide availability of COVID-19 vaccines greatly diminishes the risk to Branch from COVID-19 whether he is in prison or not. See, e.g., Scalea, 2022 WL 795425, at *1; Ibarra, 2022 WL 229198, at *1; Lemons, 15 F.4th at 751; Hald, 8 F.4th at 936 n.2; Broadfield, 5 F.4th at 803; Baeza-Vargas, 532 F. Supp. 3d at 843–46. Therefore, reducing Branch’s sentence because of his risk factors and the general risk of COVID-19 in the prison environment does not comport with application note l(A). See 18 U.S.C. §3582(c)(1)(A).

The court recognizes its discretion to reduce Branch’s sentence and order supervised release or home confinement. See United States v. Simon, No. 20-6701, 2022 WL 337126, at *1 (4th Cir. Feb. 4, 2022) (per curiam) (unpublished). Nonetheless, the court does not believe a sentence reduction, supervised release, or home confinement is appropriate for Branch. See [D.E. 209]. Moreover, the Bureau of Prisons (“BOP”) can make its own decision concerning home confinement.

See 18 U.S.C. §§ 3621(b), 3624(c); United States v. Saunders, 986 F.3d 1076, 1078 (7th Cir. 2021); United States v. Brummett, No. 20-5626, 2020 WL 5525871, at *2 (6th Cir. Aug. 19, 2020) (unpublished) (“[T]he authority to grant home confinement remains solely with the Attorney General and the BOP.”); United States v. McCoy, No. 3:19-CR-35-KDB-DCK, 2020 WL 5535020, at *1–2 (W.D.N.C. Sept. 15, 2020) (unpublished); United States v. Gray, No. 4:12-CR-54-FL-1, 2020 WL 1943476, at *3 (E.D.N.C. Apr. 22, 2020) (unpublished).

Branch is a violent recidivist who should remain in prison. If the BOP wants to release Branch to home confinement that is a decision for the BOP, and the BOP must live with the consequences. Branch’s motion for a sentence reduction [D.E. 219] is DENIED.

SO ORDERED. This 11 day of October, 2022.



JAMES C. DEVER III
United States District Judge